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From:

Sent: Friday, March 30, 2012 2:06:25 PM

To:

Cc:

Subject: RE: 3406 Case

This message responds to your questions regarding how to protect the interests of the government in a worker classification case. Exam has determined that an employer is improperly treating workers as independent contractors rather than employees. Alternatively, the employer is responsible for backup withholding because it has failed to obtain the workers' SSNs.

1)



2) Section 6651(a)(1) imposes a penalty for the failure “to file any return required under authority of subchapter A of chapter 61 (other than part II thereof” Backup withholding must be reported by a payee on Form 945, *Annual Return of Withheld Federal Income Tax*. This return is required by section 6011, which is part of subchapter A of chapter 61. Thus, the failure to file penalty under section 6651(a)(1) may apply if an employer fails to file Form 945 and report backup withholding. The penalty amount is 5% of the amount of tax required to be shown per month (or fraction of a month) with a maximum aggregate amount of 25%

Section 6651(f) increases the penalty amount if any failure to file a return is fraudulent. The penalty under section 6651(a)(1) is increased to 15% per month (or fraction of a month) with a maximum aggregate amount of 75%. Section 6651(f) may apply if a payee fraudulently fails to file Form 945 and report backup withholding. See IRM 25.1.7 for more information about the fraudulent failure to file penalty.

Please contact me if you have any further questions. Thank you for your patience.

Have a great day!